



DLA Piper LLP (US)
1251 Avenue of the Americas
27th Floor
New York, New York 10020-1104
www.dlapiper.com

April 4, 2023
VIA ECF

The Honorable Valerie Caproni
United States District Court
Southern District of New York
40 Foley Square, Room 240
New York, New York 10007

Re: Nike, Inc. v. StockX LLC, No. 22 CV 00983 (VEC) (S.D.N.Y.)

Dear Judge Caproni:

Pursuant to the Your Honor's Individual Rule 5(B)(ii), plaintiff Nike, Inc. ("Nike") and defendant StockX LLC ("StockX," and together with Nike, the "Parties") respectfully submit this joint letter requesting the sealed treatment of Nike's Objection to Magistrate Judge Netburn's March 23, 2023 Order Denying Nike's Motion to Compel (the "Objection.").

Nike's Objection sets forth the factual and legal basis for Nike's Fed. R. Civ. Proc. 72(a) objection to Magistrate Judge Netburn's March 23, 2023 Order denying Nike's Letter-Motion to compel (Dkt. No. 148). Nike's Objection references material that Parties have designated as "HIGHLY CONFIDENTIAL – ATTORNEY'S EYES ONLY" or "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL'S EYES ONLY" pursuant to the July 14, 2022 Stipulated Protective Order entered in this case (Dkt. No. 52). Magistrate Judge Netburn previously granted both Parties' requests to seal Nike's Letter-Motion (Dkt. No. 134) and StockX's response thereto (Dkt. No. 137), which referenced the same material that underlies Nike's Objection (Dkt. Nos. 139 and 145).

Sealed treatment of Nike's Objection is appropriate in light of *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119–20 (2d Cir. 2006). "[C]ourts in this District routinely seal documents to prevent the disclosure of a party's confidential or competitively sensitive business information." *Regeneron Pharms., Inc. v. Novartis Pharma AG*, 2021 WL 243943, at *1 (S.D.N.Y. Jan. 25, 2021) (collecting cases). The proposed redactions to Nike's Objection have been applied judiciously and are narrowly tailored to shield only information designated by the Parties under the Stipulated Protective Order as containing highly confidential "anticounterfeiting and brand protection measures, including methods used to identify counterfeit, grey market, and/or other unauthorized goods" or other similarly commercially sensitive material (Dkt. No. 52).

As such, Nike is filing portions of its Objection under seal pursuant to Paragraph 14 of the Protective Order and respectfully requesting that the Court approve appropriate redactions for material in the Objection that is covered by the Parties' claims of confidentiality. StockX consents to Nike's motion to the extent it seeks sealed treatment of material designed under the Stipulated



April 4, 2023
Page Two

Protective Order. However, as Nike did not identify to StockX prior to filing the particular information it does and does not plan to seal, StockX reserves all rights in connection with the substance of Nike's sealing request.

Respectfully submitted,

/s/ Tamar Y. Duvdevani
DLA PIPER LLP (US)

Tamar Y. Duvdevani
Marc E. Miller
Andrew J. Peck
Jared Greenfield
1251 Avenue of The Americas, 27th Fl.
New York, NY 10020
Telephone: (212) 335-4500
Facsimile: (212) 335-4501

Michael Fluhr
555 Mission Street, Suite 2400
San Francisco, CA 94105
Telephone: (415) 836-2500
Facsimile: (415) 836-2501

Melissa A. Reinckens
401 B Street, Suite 1700
San Diego, CA 92101
Telephone: (619) 699-2798
Facsimile: (619) 764-6624

Jane W. Wise
500 Eighth Street, NW
Washington, D.C. 20004
Telephone: (202) 799-4149
Facsimile: (202) 863-7849

Attorneys for Plaintiff Nike, Inc.

/s/ Megan K. Bannigan
Megan K. Bannigan
David H. Bernstein
Jyotin Hamid
Justin Ferrone
Kathryn C. Saba
Debevoise & Plimpton LLP
66 Hudson Boulevard
New York, New York, 10001
Telephone: (212) 909-6000

Christopher S. Ford
Debevoise & Plimpton LLP
650 California Street
San Francisco, CA 94108
Telephone: (415) 738-5705

Rob Potter
Briggs M. Wright
Kilpatrick Townsend & Stockton LLP
1114 Avenue of the Americas
New York, New York 10036
Telephone: (212) 775-8733

Jeffrey B. Morganroth
Morganroth & Morganroth, PLLC
344 N. Old Woodward Ave, #200
Birmingham, MI 48075
Telephone: (248) 864-4001

Attorneys for Defendant StockX LLC